

Department of Justice guidelines for relevant markets and market concentration, as an indicator of when different, lesser regulation may be appropriate for a given service in a given geographic area.

Transition Issue 1b (continued): (3) the extent to which those competitors have the facilities to service LEC customers.

As a practical matter, CAPs have direct access to only those few buildings to which their networks directly extend, and thus can only provide a full competitive alternative to the customers located in those buildings. In all other cases, they are dependent on LEC facilities to reach their customers, and thus cannot exert an effective competitive check on LEC pricing and service practices. While the LECs will likely recite evidence on the number of CAPs, the number of cities they are in, the number of fiber miles they have, such statistics ignore the basic market reality that the CAPs can only directly serve a tiny fraction of the market.

Transition Issue 1b (continued) (4) the willingness of customers to use competitors' services, and if so, how should this criterion be measured.

Customers choose CAP services to provide services that the LECs do not provide, or do not provide well. Some of the needs that customers meet through CAP services are (a) operational security, through increased reliability and diversity; (b) improved quality of service; and (c)

strategic security, the desire to buy services from a vendor that is not a competitor.

While price is always used as the benchmark, it is TCG's experience that price only becomes an issue once the above criteria have been met, and customers may be willing to pay a premium for a higher level of service.

While customers are willing to use CAP services, the more important issues are availability and economic viability. Because competitors are not ubiquitous, customers must rely to a large extent upon the LEC's bottleneck services, and thus competitive alternatives are simply not available for many customers.

Second, competitors cannot offer services unless it is economically practical to do so. The exorbitant rates charged for expanded interconnection are a prime example of a structural problem which inhibits the practical availability of competitive options for customers. LEC rates for expanded interconnection are extremely high when compared to the LEC's competing rates for end-to-end special or switched transport services. This imposes severe limits on competitors' ability to provide economically attractive services to their customers.

Transition Issue 1b (continued) (5) the competitors' market share and, if so, how should the term "market" be defined.

TCG believes that the relevant market for assessing the degree of competition should be the total regulated market

currently served by the LECs, which would include access services, local services, intraLATA toll, and associated (tied) services (such as directory assistance, directory publishing). Analysis of the characteristics of the total local market is necessary because the LECs utilize a single, integrated network to provide all of these services. This allows LECs to cross subsidize the prices of services facing competition with revenues from less competitive services, and since a common set of facilities is used it is difficult if not impossible to police or prevent such cost shifting. At present, the competitors' share of this \$80 billion plus market is under 1%.

TCG also believes that competitor net revenues are the appropriate measure of competitor market share. Because CAP prices are tied to LEC prices due to LEC market power, use of total net CAP revenues (rather than "transmission capacity" or other demand related elements as some LECs have suggested) is a better measure of CAP market share. In essence, total LEC revenues represent the sum of LEC prices for all services times demand for all services. Total CAP revenues represent the sum of CAP prices for all the services they are permitted to offer times all the demand they have been able to attract. Accordingly, comparison of CAP revenues and LEC revenues represents a realistic comparison of relative demand levels. It is necessary, however, to use "net" CAP revenues to avoid double-counting

and overstatement of CAP market share. Total CAP revenues must be reduced by the amount of money that is paid to the LECs for interconnection services, since those revenues are already included in the LEC's revenue numbers, and do not actually represent any CAP market share, but merely the portion of LEC revenues for which CAPs are the source. For example, through expanded interconnection arrangements, a CAP may be the customer of record and provider of many circuits that are made up merely of resold facilities of the LEC. These resold service elements are part of the LEC's market share, as they are the actual provider of the underlying service. Adjusting CAP revenues to only incorporate net revenues avoids the double counting of resold services and consequent exaggeration of CAP market shares.

Transition Issue 1b (continued): (6) pricing trends

The FCC has provided considerable pricing flexibility to the LECs. The degree of pricing flexibility that has been given to the LECs vastly exceeds any development of competition in the marketplace. The LECs have been able to aggressively (and in some cases improperly) price their services.

Excessive prices for collocation elements, coupled with unreasonably low prices for competing retail services, in some cases have created situations where it is cheaper to

buy an entire end-to-end retail service from the LEC, than to purchase a sub-component (collocation) from the LEC in order to offer a competing service.

LECs have also sought to implement unreasonable rearrangement charges and excessive termination liabilities which has the effect of "freezing" the market and preventing customers from exercising freedom of choice. FCC "fresh look" policies are completely inadequate insofar as creating any opportunity for customers to really exercise choice -- in several cases the FCC's "fresh look" policy is more punitive than the LEC's preexisting termination liabilities.

LECs also seek to implement various volume discount plans that make incremental demand so inexpensive (while baseline demand is priced at far higher levels) that customers have no practical opportunity to shift any demand to other carriers. The Commission has thus far exerted no effective regulation over these anticompetitive LEC practices. As a consequence, the current pricing trends in the industry are running in advance of the development of any competition, and no further relaxation of LEC pricing regulation is appropriate.

Transition Issue 1b (continued): (7) the effect of expanded interconnection

Despite the FCC's intentions to create more competition, expanded interconnection for interstate access services has been a disappointment. The physical

collocation rates filed for construction, floor space, cross-connects, and other elements are excessive, and, as a result, have greatly limited the number of central offices, and thus the number of end users, to which competitors can reasonably and profitably gain access to. The LECs have also aggressively opposed the FCC's expanded interconnection policies before the Courts, while still seeking (and utilizing) the pricing flexibility benefits that are in effect an "advance payment" to the LECs in exchange for the promise of greater competition through physical collocation. Expanded interconnection has actually placed competitors in a price squeeze, as the LECs have been able to deaverage rates via zone density pricing on a statewide basis based upon a single cross-connect, while competitors are faced with exorbitant fees in order to reach the same customers.

TCG views expanded interconnection as an integral part of providing the benefits of competition to large number of end users. Unfortunately, the LECs have priced competitors out of all but a few central offices in each state, and as yet the FCC has not completed its investigation and forced the LECs to lower rates to more realistic levels. Certainly the existence of expanded interconnection has not created a basis for any additional regulatory flexibility for the LECs.

Transition Issue 1b (continued): (8) differences in competition in different geographic locations or regions,

and differences in demographic characteristics, such as whether services are available to all groups within a broad community or area

It is certainly true that the degree of competition varies from place to place. A key factor influencing the extent of competition is whether state regulatory policies are favorably disposed toward competition. Basic market considerations also affect competitor's in their choice of where to install or expand competitive networks. And since the basic technology used by the competitors -- fiber optic facilities -- is best suited to high volume, high density applications, not surprisingly competitive networks have tended to develop in areas with business and commercial properties.

It is important, however, not to be confused by too-simple statistics. Other parties to this proceeding will undoubtedly cite the number of cities in which CAPs are located, the number of people in those metropolitan areas, and will likely claim that CAPs are capable of serving what may appear to be substantial numbers of customers. In reality, CAPs can only serve customers in those relatively few buildings where their networks reach, and they are totally dependent on the LEC to serve any other customers. As a consequence, even in cities such as New York, Chicago, and San Francisco, where multiple CAPs operate and where their services has been available for some time, only a relatively few customers have direct access to CAP services.

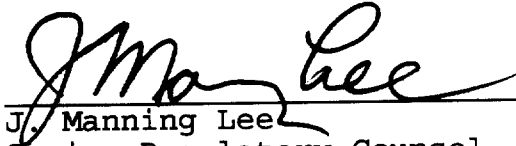
CONCLUSION

The basic assumption which underlies much of the Commission's Notice -- that the local telecommunications marketplace has changed so fundamentally that LEC price cap regulation must be revised -- is simply not true. The extent of competition the LECs face today is far more modest than that faced by AT&T in 1982, when public policy favored strong measures to improve the climate for developing long distance competition. By contrast, local competition today is far weaker than long distance competition was in 1982, yet the FCC is examining ways to make competition easier for the LECs.

The fact is that local competition today is more anecdotal than real. Competitors are still vitally dependant on the LECs, and will remain so for the foreseeable future. Moreover, true local exchange competition is legal in only three states -- there only recently -- and has not been shown to be technically and economically feasible there or anywhere else. Under such

circumstances, there is simply no factual predicate for weakening price cap regulation of the LECs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Manning Lee", is written over a horizontal line.

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